

STATE OF MICHIGAN
COURT OF APPEALS

STATE FARM FIRE AND CASUALTY
COMPANY,

UNPUBLISHED
October 2, 1998

Plaintiff-Appellee,

v

No. 200100
Kent Circuit Court
LC No. 95-005395 CK

DANIEL SAVICKAS and MARGARET EVANS, as
Personal Representative for the Estate of Jennifer Jo
Savickas,

Defendants-Appellees.

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Defendants appeal by right the declaratory judgment that plaintiff is not obligated to tender defendant Daniel Savickas a defense or cover losses arising from the death of his daughter, Jennifer Jo Savickas. We affirm.

This action arises from the death of Jennifer Jo Savickas in December 1993. Jennifer, a twenty-one-year-old junior at St. Bonaventure University in New York, was visiting her family in Grand Rapids during the holidays. When she complained that the basement guest bedroom in which she slept was cold, her father plugged a vent in the furnace room, inadvertently causing the furnace to release carbon monoxide into the house. Jennifer died of carbon monoxide poisoning.

Plaintiff commenced this action for a declaratory ruling whether it would have to tender defendant Daniel Savickas a defense under his homeowners' policy and indemnify him against any loss arising from an anticipated lawsuit by Jennifer's estate. The policy excluded coverage for bodily injury suffered by an "insured" on the premises and any claim brought against an insured by another insured. Under the policy, the term "insured" includes "relatives" who are "residents" of the household.

Defendants moved for summary disposition under MCR 2.116(C)(10) on the ground that Jennifer was not a resident of the Savickas household. Plaintiff, in turn, moved for entry of a declaratory judgment regarding its duty to defend and cover losses under the policy. After a hearing, the trial court

denied defendant's motion and entered a declaratory judgment that plaintiff did not owe defendant Savickas a defense and was not obligated to indemnify him against any loss. The court concluded that the policy excluded coverage for Jennifer's death because she was a resident of her parents' household.

Defendants argue that the trial court abused its discretion in granting summary disposition for plaintiff under MCR 2.116(C)(10) because Jennifer was not a resident of the Savickas household. The record, however, reveals that the trial court entered a declaratory judgment on the basis of its factual finding that Jennifer was a resident of her father's household.¹ The parties did not dispute the underlying facts; instead, they disputed the determination of residency on the basis of these undisputed facts. Although this Court reviews a trial court's decision whether to grant declaratory relief for an abuse of discretion, *see, Allstate Ins Co v Hayes*, 442 Mich 56, 74; 499 NW2d 743 (1993), we will not reverse a trial court's findings of fact in a declaratory judgment action unless they were clearly erroneous. *Auto-Owners Ins Co v Harvey*, 219 Mich App 466, 469; 556 NW2d 517 (1996).

Defendants first argue that this Court must construe the term "resident" in the insurance policy against plaintiff insurer and in favor of coverage because it is ambiguous. Insurance policies are contracts, which we interpret using the general rules of construction. *Royce v Citizens Ins Co*, 219 Mich App 537, 542; 557 NW2d 144 (1996); *South Macomb Disposal Authority v American Ins Co (On Remand)*, 225 Mich App 635, 653; 572 NW2d 686 (1997). Insurers may define or limit the scope of coverage as long as the policy language lends itself to one reasonable interpretation that does not contravene public policy. *Heniser v Frankenmuth Mut Ins Co*, 449 Mich 155, 161; 534 NW2d 502 (1995). This Court must determine the substance of the agreement and enforce it. *Royce, supra* at 542. In so doing, we accord the contract language its plain and ordinary meaning. *Id.* Where ambiguity exists, however, we must construe the policy language in favor of the insured. *South Macomb, supra* at 653.

This Court recently considered the policy language involved in this case in *Vanguard Ins Co v Racine*, 224 Mich App 229; 568 NW2d 156 (1997). In *Vanguard*, the insurer sought a declaratory ruling whether its homeowners' policy provided coverage for losses arising from the death of its insured's three-year-old son in a lawnmower accident. At the time of the accident, the insured shared joint legal custody of his son with his ex-wife, who had physical custody. The policy, as in the instant case, defined the term "insured" as including relatives who were "residents" of the household and did not provide coverage for bodily injury sustained by any "insured." The policy further excluded coverage for medical payments for bodily injury to any person "regularly residing" at the insured location.

In *Vanguard, supra* at 231-232, this Court initially distinguished the line of cases equating the term "resident" in insurance policies with place of domicile because those cases involved circumstances where this Court endeavored to find that an individual was a resident so that his claim would fall within the scope of coverage. This Court then determined that the terms "residents" and "regularly resides" were ambiguous because they could be interpreted either as synonymous with "domicile" or "to include relatives who periodically stay in a home indefinitely, but maintain a legal domicile at some other location during the same period." *Id.* at 234. This Court noted that the child's domicile was at his mother's home, but his father's home arguably fell within the alternate interpretation of the contract language. In

light of the ambiguity, this Court construed the contract language against the drafter/insurer and in favor of coverage. *Id.*

In this case, however, the principle of construction relied on in *Vanguard* is not dispositive because defendants do not proffer a construction of the contract language that conclusively provides coverage. See *Auto-Owners Ins Co v Leefers*, 203 Mich App 5, 11-12; 512 NW2d 324 (1993). Our Supreme Court explained this rule of construction in *Raska v Farm Bureau Mut Ins Co*, 412 Mich 355, 362; 314 NW2d 440 (1982):

If a fair reading of the entire contract of insurance leads one to understand that there *is coverage under particular circumstances* and another fair reading of it leads one to understand there is no coverage under the same circumstances the contract is ambiguous and should be construed against its drafter and in favor of coverage. [Emphasis added.]

Unlike the injured child in *Vanguard*, whose domicile was not in the named insured's household, a factual question existed in this case regarding Jennifer's domicile. As such, even assuming that an ambiguity exists and this Court must construe the contract language in favor of coverage, the trial court properly decided the factual question whether Jennifer was a resident under the circumstances of this case.

Defendants next argue that the trial court erred in finding that Jennifer was a resident of her father's household. We disagree. Courts usually consider the terms "residence" and "domicile" as legally synonymous.² *Dairyland Ins Co v Auto Owners Ins Co*, 123 Mich App 675, 680; 333 NW2d 322 (1983); see *Workman v DAIIE*, 404 Mich 477, 495; 274 NW2d 373 (1979). In *Workman*, *supra* at 495-496, however, our Supreme Court explained that courts must view the meaning of the terms flexibly under the circumstances of each case. The trial court resolves this question of fact. *Witt v American Family Mut Ins Co*, 219 Mich App 602, 605; 557 NW2d 163 (1996); *Dairyland*, *supra* at 684. This Court reviews the trial court's finding for clear error. *Harvey*, *supra* at 469.

The trial court must consider several factors in determining whether a person is a resident of an insured's household. *Workman*, *supra* at 496; *Williams v State Farm Mut Automobile Ins Co*, 202 Mich App 491, 494; 509 NW2d 821 (1993). The Supreme Court identified four of these factors in *Workman*, *supra* at 496-497:

(1) the subjective or declared intent of the person of remaining, either permanently or for an indefinite or unlimited length of time, in the place he contends is his "domicile" or "household"; (2) the formality or informality of the relationship between the person and the members of the household; (3) whether the place where the person lives is in the same house, within the same curtilage or upon the same premises; (4) the existence of another place of lodging by the person alleging "residence" or "domicile" in the household. [Citations omitted.]

This Court identified five additional factors in *Dairyland*, *supra* at 682.

Other relevant indicia of domicile include such factors as whether the claimant continues to use his parents' home as his mailing address, whether he maintains some possessions with his parents, whether he uses his parents' address on his driver's license or other documents, whether a room is maintained for the claimant at the parents' home, and whether the claimant is dependent upon the parents for support.

No one factor is determinative. The trial court must balance and weigh the factors under the circumstances of the particular case.³ *Workman*, *supra* at 496-497 & n 6.

In this case, the trial court determined that the first and second *Workman* factors weighed in favor of finding that Jennifer was a resident of her parents' household and that the third factor did not apply. The court noted that the fourth factor favored nonresidency but was secondary to Jennifer's subjective belief regarding her domicile. Regarding the five *Dairyland* factors, the trial court concluded that the first and second factors favored nonresidency, the fourth factor was neutral, and the third and fifth factors favored a finding of residency. The trial court then determined on the basis of these findings that Jennifer was a resident of defendant Daniel Savickas' household because a "majority of the factors militate[d] in favor of" residency.

We agree with the trial court that the *Workman* factors favor a finding of residency. The trial court properly found that Jennifer regarded her parents' home as her "home base" at the time of her death. Although Jennifer lived for eight or nine months of the year in her college dormitory in New York and planned eventually to establish an independent household, her plans were tentative. She had, in fact, returned to Grand Rapids during the summers after her first and second years of college and resided with her parents. Further, Jennifer obviously had an intimate familial relationship with her parents' household.

We likewise agree with the trial court's findings regarding the *Dairyland* factors. Jennifer used her parent's address for tax purposes. Her driver's license reflected her address on Dorais Street in Grand Rapids, where she lived with her parents before leaving for college. She neither changed the license to reflect her parents' new address on Bluff Court in the summer of 1992, nor obtained a New York license. Jennifer, however, used a New York address for banking purposes with a Michigan bank. The trial court properly concluded on the basis of this evidence that the third factor favored a finding of residency because Jennifer generally used her parents' address for official purposes. The record also supports the trial court's finding regarding the first *Dairyland* factor because Jennifer generally used her New York address for mailing purposes.

Regarding the second and fourth *Dairyland* factors, the record reflects that Jennifer had had her own bedroom in her parents' former house, but did not have a permanent room in their new house. Jennifer's parents gave her bedroom furniture to her younger sister and Jennifer used the basement computer/guest room when she stayed at the house. According to her parents, Jennifer did not maintain possessions at the home. The trial court correctly observed that these factors supported a finding that Jennifer was not a resident of her parents' household.

The trial court also properly concluded that the final *Dairyland* factor supported a finding of residency. The court correctly observed that Jennifer was “very heavily” dependent on her parents for support. Her parents paid all the costs associated with college, including tuition and room and board. Jennifer merely earned spending money during this period.

We conclude that the trial court did not clearly err in finding that Jennifer was a resident of defendant Daniel Savickas’ household on the basis of this evidence. Although some of the *Workman* and *Dairyland* factors favored a finding of nonresidency, the trial court properly gave more weight to the remaining factors. Jennifer continued to use her parents’ home as her residence or domicile while she attended college in New York. She relied heavily on her parents for financial support during this period. Although Jennifer possibly intended to establish a permanent residence elsewhere in the future, she had yet to do so when her life was cut short in a tragic accident. Accordingly, the trial court properly granted a declaratory judgment that plaintiff owed defendant Savickas no duty to defend or indemnify under the policy because Jennifer was a resident of his household.

Affirmed.

/s/ Maura D. Corrigan

/s/ Joel P. Hoekstra

/s/ Robert P. Young, Jr.

¹ Under MCR 2.605(D), the trial court may hold a speedy hearing in an action for declaratory relief. In this case, although the trial court stated that it was considering cross-motions for summary disposition under MCR 2.116(C)(10), it essentially accelerated trial under MCR 2.116(I)(3) and entered judgment on the facts as determined by it. Neither party objected below to this manner of disposition or challenges the propriety of the trial court’s action on appeal. Accordingly, the issue has been abandoned. See *Brookshire-Big Tree Ass’n v Onieda Twp*, 225 Mich App 196, 201; 570 NW2d 294 (1997); *Phinney v Perlmutter*, 222 Mich App 513, 544; 564 NW2d 532 (1997).

² This Court’s comments in *Vanguard*, *supra* at 231-232, regarding decisions equating residence and domicile are obiter dictum because the statements were not essential to determination of the case. *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 597; 374 NW2d 905 (1985). *Vanguard* is consistent with this Court’s prior decisions because, in the end, *Vanguard* construed the term “resident” as synonymous with “domicile.”

³ In *Goldstein v Progressive Casualty Ins Co*, 218 Mich App 105, 111-112; 553 NW2d 353 (1996), and *Montgomery v Hawkeye Security Ins Co*, 52 Mich App 457, 459-461; 217 NW2d 449 (1974), this Court upheld the trial courts’ respective findings that a college student who lived apart from his parents during the school year was a resident of his parents’ household for insurance purposes. Those decisions, while providing guidance regarding the application of the factors for determining residency, do not control the disposition of a given case. The determination of residency remains a question of fact for resolution by the trial court. *Witt*, *supra* at 605.